



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

**[SATS No. KY-258-FOR; Docket ID: OSM-2015-0001;
S1D1SSS08011000SX066A00067F144S180110;
S2D2SSS08011000SX066A00033F14XS501520]**

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE), is announcing receipt of a proposed amendment to the Kentucky regulatory program (the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky submitted this proposed amendment with the intent to clarify certain permit application requirements. Specifically, Kentucky proposes to amend the language of two provisions that outline the permit application requirements for an operator seeking to mine land with severed surface and mineral estates.

This document gives the times and locations that the Kentucky program and this proposed amendment to that program are available for your inspection, the comment

period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., Eastern Standard Time (EST), **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If requested, we will hold a public hearing on the amendment on **[INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. We will accept requests to speak at a hearing until 4:00 p.m., EST on **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by SATS No. KY-258-FOR and Docket ID OSM-2015-0001, by either of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. The proposed rule has been assigned Docket ID OSM-2015-0001. If you would like to submit comments via the Federal eRulemaking portal, go to *www.regulations.gov* and follow the instructions.
- Mail/Hand Delivery: Mr. Robert Evans, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.
- E-mail: *bevans@osmre.gov*.
- Fax: (859) 260-8410.

Instructions: All submissions received must include the agency name and docket number

for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE’s Lexington Field Office or the full text of the program amendment is available for you to read at *www.regulations.gov*.

Mr. Robert Evans, Field Office Director

Lexington Field Office

Office of Surface Mining Reclamation and Enforcement

2675 Regency Road

Lexington, Kentucky 40503

Telephone: (859) 260-3900.

E-mail: *bevans@osmre.gov*.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Steve Hohmann, Commissioner

Kentucky Department for Natural Resources

2 Hudson Hollow

Frankfort, Kentucky 40601

Telephone: (502) 564-6940.

E-mail: *Steve.Hohmann@ky.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Evans, Office of Surface Mining Reclamation and Enforcement, Telephone: (859) 260-3900. E-mail: *bevans@osmre.gov*.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “. . . a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally

approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the May 18, 1982, Federal Register (47 FR 21434). You can also find later actions concerning the Kentucky program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated January 29, 2015 (Administrative Record No. KY-2001), the Kentucky Department for Natural Resources (KYDNR) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*).

SMCRA sets forth the minimum application requirements for approval of a permit at section 510. When the mineral estate has been severed from the private surface estate, section 510(b)(6) of SMCRA provides that an operator must submit a permit application demonstrating one of the following to establish right of entry and right to mine: (1) the written consent of the surface owner to the extraction of coal by surface mining methods, (2) a conveyance expressly granting or reserving the right to extract coal by surface mining methods, or (3) if the conveyance is silent regarding the right to extract coal, the regulatory authority is required to determine the "surface-subsurface legal relationship" in accordance with the State law. Moreover, SMCRA clarifies, at section 510(b)(6)(c), that the regulatory authority does not have the authority to adjudicate property rights disputes.

Currently, the Kentucky program requires a permit applicant to submit proof of its legal right to enter and commence surface or underground mining activities within the proposed permit area. The applicant is also required to explain the legal rights claimed and identify whether that right is the subject of pending litigation, among other application requirements. When the proposed land to be mined involves severed estates where the conveyance does not expressly grant the right to extract coal by surface mining methods and the operator has not obtained the written consent of all surface owners, the approved Kentucky program provides that the submission of a copy of the original instrument of severance and documentation that under applicable State law, the applicant has the legal authority to extract the coal by those methods is sufficient to demonstrate a right of entry and right to surface mine.

KYDNR now seeks to revise section 4 of 405 KAR 8:030 for surface coal mining permits, and 405 KAR 8:040 for underground coal mining permits. Specifically, KYDNR proposes to modify section 4(2)(c) to contain language that it believes clarifies the applicant's duty to demonstrate a right of entry and right to mine when the private surface estate and mineral estate has been severed. This revision proposes to remove the language in the current Kentucky program that requires the applicant to provide a copy of the original severance instrument. The proposed amendment would also move the proviso that the regulatory authority is prohibited from adjudicating property rights disputes into a new section, located at section 4(3) of 405 KAR 8:030 and 8:040.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov*.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal

identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4p.m., EST on **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

__Dated: March 30, 2015.

Thomas D. Shope,

Regional Director,

Appalachian Region.

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